

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

ANN RAMSEY,)	
)	
Appellant,)	Case No. 08R 363
)	
v.)	DECISION AND ORDER
)	REVERSING THE DECISION OF
JOHNSON COUNTY BOARD OF)	THE JOHNSON COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Ann Ramsey ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on July 24, 2009, pursuant to an Order for Hearing and Notice of Hearing issued May 19, 2009. Commissioners Warnes and Salmon were present. Commissioner Warnes was the presiding hearing officer. Commissioner Wickersham was excused from participation by the presiding hearing officer. Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

Ann Ramsey was present at the hearing. Jason L. Scott appeared as legal counsel for the Taxpayer.

Julie Smith Hogancamp, County Attorney for Johnson County, Nebraska, was present as legal counsel for the Johnson County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2008). The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2008, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining actual value of the subject property, is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2008.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2008, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining the equalized taxable value of the subject property, is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2008.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.
3. Actual value of the subject property placed on the assessment roll as of January 1, 2008, ("the assessment date") by the Johnson County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: TECUMSEH -- IOLL SPACE #8 OT LOTS 1-5 BLK 55, Tecumseh, Johnson County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$0	\$0	\$0
Improvement	\$18,310.00	\$11,150.00	\$18,310.00
Total	\$18,310.00	\$11,150.00	\$18,310.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Order for Hearing and Notice of Hearing issued on May 19, 2009, set a hearing of the appeal for July 24, 2009, at 1:00 p.m. CDST.

7. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
8. Actual value of the subject property as of the assessment date for the tax year 2008 is:

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Land value	\$0
Improvement value	<u>\$9,700.00</u>
Total value	<u><u>\$9,700.00.</u></u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2008).
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
3. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in

section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).

4. “Actual value, market value, and fair market value mean exactly the same thing.”
Omaha Country Club v. Douglas County Board of Equalization, et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2008).
7. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” *Neb. Const.*, Art. VIII, §1.
8. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
9. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

10. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
11. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
12. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
13. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
14. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
15. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic

will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

16. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
17. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization, fixing or determining valuation of real estate for tax purposes, is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
18. The presumption disappears if there is competent evidence to the contrary. *Id.*
19. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
20. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

21. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."
Castellano v. Bitkower, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
22. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
23. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
24. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).
25. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
26. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
27. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and*

Tel. Co. v. County Bd. Of Equalization of York County, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized taxable value) *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. ANALYSIS

The subject property is an improvement located on leased land (IOLL). (E10:1). The improvement is a 67 x 16 foot mobile home of 1,072 square feet of living area built by Champion, of the Duchess SW type, in 1996. (E10:2). The mobile home has been rated average for both quality and condition. (E10:2).

The Taxpayer's first allegation is that the County failed to comply with proper legal procedures in assessing the subject property for 2008. The Taxpayer testified that she received two notices of assessed valuation for the subject property for 2008. The first notice of valuation, dated May 31, 2008, was in the amount of \$9,700, and was sent by the County Assessor. (E2 from Show Cause Hearing). The second notice of valuation for 2008, dated July 15, 2008, was in the amount of \$18,310, and was sent out by the County Board of Equalization. (E3 of Show Cause Hearing and E18:1). The Taxpayer testified that the date of the second valuation notice coincided with the date of protest hearings the Taxpayer had for other properties she owns in the county.

The Commission takes notice of its Order Determining Jurisdiction dated November 26, 2008, following the Show Cause Hearing of November 25, 2008, in which the parties stipulated that "the County Board acted pursuant to section 77-1504 of Nebraska statutes as it determined

taxable value of the subject property, for the tax year 2008. The Taxpayer reserved all objections related to the County Board's compliance with the procedural requirement of section 77-1504 of the Nebraska Statutes." (Decision and Order Determining Jurisdiction, page 3).

The Taxpayer filed a protest, Form 422, to the second valuation by the County Board, dated July 15, 2008. (E12:1) The Taxpayer testified that her protest was heard by the County Board on August 19, 2008. A determination was made by the County Board, dated August 19, 2009 and sent to her. (E12:1). Neb. Rev. Stat. 77-1504 provides for allowance "...to consider and correct the current year's assessment of any real property which has been undervalued or overvalued." The statute allows for such action on or after June 1 and on or before July 25. This statute requires that hearings on protests occur by September 15. The Commission finds that the second notice of valuation, the protest by the Taxpayer, the County Board hearing on the protest, and the notice of the decision by the County Board were all timely sent and heard. This finding still does not resolve the base issue of whether the second valuation notice was lawful.

The Commission's review of Neb. Rev. Stat. 77-1504 shows that, "The County Board of Equalization in taking action pursuant to this section **may only** (emphasis supplied) consider the report of the County Assessor pursuant to section 77-1315.01." The Commission notes that this portion of 77-1504 reads as permissive in that it uses "may" and not mandatory language, but conditions the permissive word choice with the word "only". Neb. Rev. Stat. 77-1305.01, which is referred to in 77-1504, states that "... that the County Assessor **shall** (emphasis supplied) report to the County Board of Equalization any overvaluation or undervaluation of any real property. The County Board of Equalization **shall** (emphasis supplied) consider the report in accordance with section 77-1504 (which contains permissive rather than mandatory language)."

The chairperson of the County Board of Equalization testified that it was he who detected the undervaluation of the subject property by comparing the “old” property record file for the subject property, to the Form 521 filed by the Taxpayer. The Form 521 was filed by the Taxpayer on April 8, 2007 and showed that the subject property was built in 1996. (E11:1). The chairperson of the County Board of Equalization testified that the second notice of valuation was issued to correct the error of the manufacture date for the subject property.

The Commission further finds that the correction of the error, the date of manufacture of the subject property, was not a “clerical error” as defined in Neb. Rev. Stat. 77- 128 and as referred to in Neb. Rev. Stat. 77-1507 (2008 Cum Supp).

The Commission finds that the language of Neb. Rev. Stat. §77-1504, uses permissive language conditioned with “only”, and Neb. Rev. Stat. §77-1315.01 which is referenced in 77-1504, uses mandatory language. Neb. Rev. Stat. §77-1504 is ambiguous and cannot be interpreted within the plain meaning of the language used. The Commission defers to the intent of the law which created this statute, LB-808. The Commission finds from a review of this legislative history that Neb. Rev. Stat. §77-1504 should be read to require a report from the County Assessor of any overvalued or undervalued property in order for the County Board to act in accordance with Neb. Rev. Stat. §77-1504. The County Board acted without a report from the County Assessor and therefore acted unlawfully.

"There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal

to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb.App. 688, 696, 584 N.W.2d 837, 842 - 843 (1998) .

The Commission finds that the Taxpayer has rebutted the presumption by competent evidence and has shown by clear and convincing evidence that the County Board was arbitrary or unreasonable. This finding rests principally on the Commission's determination that the County Board did not act lawfully in sending out the second notice of valuation to the Taxpayer for the 2008 tax year.

The Commission finds that the second notice sent out by the County Board was not lawful and in accordance with Neb. Rev. Stat. §77-1504. The Commission, having found the second notice unlawful, will not examine further evidence in this appeal. The appeal of the Taxpayer is granted and the assessed valuation of the subject for 2008 shall be \$9,700.

V. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.

4. The Taxpayer has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be reversed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining actual value of the subject property as of the assessment date, January 1, 2008, is reversed.
2. Actual value, for the tax year 2008, of the subject property is:

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Land value	\$0
Improvement value	<u>\$9,700.00</u>
Total value	<u><u>\$9,700.00</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Johnson County Treasurer, and the Johnson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2008.

7. This order is effective for purposes of appeal on November 23, 2009.

Signed and Sealed. November 23, 2009.

William C. Warnes

Nancy J. Salmon, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.